

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH***

**Criminal Revision No. 2262 of 2010
Date of Decision:-22.04.2016**

Elayash

...Petitioner

Versus

State of Haryana

...Respondent

CORAM:- HON'BLE MR. JUSTICE HARI PAL VERMA

1. *Whether reporters of local newspapers may be allowed to see judgment?*
2. *To be referred to reporters or not?*
3. *Whether the judgment should be reported in the Digest?*

Present:- Mr. R.K. Agnihotri, Advocate for
Mr. Kapil Aggarwal, Advocate
for the petitioner.

Mr. Manish Bansal, Deputy A.G., Haryana.

HARI PAL VERMA J.(Oral)

Petitioner-Elayash son of Kashim, resident of V.P.O. Manakpur, Tehsil Rurki, P.S. Jhabera, District Haridwar (Uttranchal) has filed the present revision petition against the judgment dated 30.7.2010 passed by learned Additional Sessions Judge, Yamuna Nagar, whereby his appeal against the judgment of conviction dated 5.11.2009 and order of sentence dated 6.11.2009 passed by learned Chief Judicial Magistrate, Yamuna

Nagar at Jagadhri, was dismissed.

Learned Chief Judicial Magistrate, Yamuna Nagar at Jagadhri vide judgment dated 5.11.2009 held the petitioner guilty for commission of violation of provisions contained in Section 7 of the Prevention of Food Adulteration Act, 1954 (for brevity, "the Act"), punishable under Section 16(1)(a)(i) of the said Act and vide order dated 6.11.2009 sentenced him to undergo rigorous imprisonment for a period of six months and to pay fine of Rs.1000/- and in default of payment of fine, to further undergo simple imprisonment for a period of one month.

Briefly, stated the facts of the case of the prosecution are that on 17.12.2000 at about 11.00 a.m. at Bus Stand, Bhambholi, complainant Prithvi Singh, Government Food Inspector (for short 'GFI') alongwith Dr. Rajiv Trehan, the then Medical Officer, PHC Buria and independent witness namely Vijay Singh inspected the premises of petitioner and found him in possession of about 15 kilograms of 'Sakkar' in a plastic palli (piece of plastic sheet) and demanded the sample thereof (Sakkar) by giving him notice in writing on Form VI prescribed under the Prevention of Food Adulteration Rules, 1955 (for short 'the Rules'). He purchased 750 grams of Sakkar after mixing the whole contents properly and making it uniform, from the petitioner after paying Rs.6/- to him. The Sakkar so purchased

was divided in three equal parts and put in three bottles. 20 drops of formaline 40% were added as preservative in each bottle and the bottles were stoppered, packed, securely fastened, wrapped and sealed on the neck of the bottles. These bottles were labeled and again wrapped in strong thick paper. The slip bearing Code No. 4MN-DH/EH=A-959 issued by L.H.A. Yamuna Nagar was pasted from top to bottom on each bottle with gum. The same were secured by means of strong twined thread and sealed with the seal of GFI and medical officer. The thumb impressions of the petitioner were also obtained in such a manner that both the paper slip and wrapper of the sample carry the part of his thumb impressions. One sealed bottle packed alongwith Form VII with specimen impressions of the seals used to seal the bottles in a box was sent to the Public Analyst, Haryana for analysis through special messenger namely Subhash Chand, SSK on 18.12.2000.

After the receipt of report of the Public Analyst, Haryana, the sample was found having 11.89% of moisture contents, as against the maximum limit of 10.0% as laid down under the provisions of the Rules. On the basis of these facts i.e. report, the complaint was filed against the petitioner.

Upon notice, petitioner appeared before the trial Court and was granted concession of bail.

In pre-charge evidence, complainant Prithvi Singh, GFI, himself had appeared as PW1 and reiterated the averments made in the complaint. On the basis of pre-charge evidence led by the complainant and there being a prima facie case against the petitioner for commission of violation of the provisions contained in Section 7 of the Act punishable under Section 16(1)(a)(i) of the Act, charge-sheet was framed against him vide order dated 20.3.2003 to which he pleaded not guilty and claimed trial.

In after-charge evidence, complainant Prithvi Singh, GFI himself had stepped into witness box as PW1 and further examined Ashok Kumar, MPHWW as PW2, Dr. Rajiv Trehan as PW3 and thereafter evidence on behalf of complainant was closed by Court order. The incriminating circumstances appearing in the evidence produced by the complainant were confronted to the petitioner under Section 313 Cr.P.C. He controverted the same. Though, accused opted to adduce evidence in defence, but despite availing opportunities, he could not produce the same.

After analyzing the evidence on record and hearing both the sides, the learned trial Court, vide judgment dated 5.11.2009 held the petitioner guilty for commission of violation of provisions contained in Section 7 of the Prevention of Food Adulteration Act, 1954 (for brevity, "the Act"), punishable under Section 16(1)(a)(i) of the Act and vide order dated 6.11.2009

sentenced him as aforesaid.

Against the judgment of conviction dated 5.11.2009 and order of sentence dated 6.11.2009, petitioner preferred an appeal before the learned Additional Sessions Judge, Yamuna Nagar, who vide judgment dated 30.7.2010 upheld the conviction and dismissed the appeal.

It is in the aforesaid circumstances, the petitioner has filed the present revision petition.

Learned counsel for the petitioner instead of arguing the case on merits, confined his arguments on the point of quantum of sentence. He submits that the petitioner is a petty shopkeeper and is suffering the agony of trial for the last about 15 years i.e. the date when complaint was filed on 09.2.2001 and there is no other case of such or similar nature against him. In the case in hand, a sample was drawn of *Sakkar*, which was wrapped in a plastic palli for public sale. The total quantity of *Shakkar* was 15 kilograms from which the sample was drawn. Since the sample was drawn during the month of December, 2000, which is a winter season, moisture contents are usually found, more particularly when it is *Shakkar*. He also submits that as against the permissible limit of 10.0%, the moisture contents were found marginally higher (i.e. 11.89%) and the GFI nowhere in his statement has stated that the moisture content found in the *Sakkar*

is injurious to health and in this manner, no harm is caused to the public or any person.

Learned State counsel, however, submits that the cases of food adulteration are on high rise and by selling such adulterated material, the petitioner has tried to play with the lives of innocent people. Use of such adulterated contents shall certainly cause injury to the public.

I have heard learned counsel for the parties and have gone through the case file.

There is no dispute regarding the fact that the complaint in question was filed on 09.2.2001 and the petitioner is suffering the agony of trial for the last about 15 years. Moreover, the sample was drawn during the month of December 2000, which is a winter season and, therefore, the possibility of higher moisture content during this season cannot be ruled out. Admittedly, the petitioner was running a small shop and being a petty shopkeeper is purchasing such like material from the wholesale dealer. Moreover, such stocks are usually stored at a place which otherwise visible/subject to exposure. Furthermore, the moisture contents have been found marginally higher than the permissible limit. Therefore, the petitioner would not have intentionally introduced the moisture contents.

Hon'ble Supreme Court in Nand Lal vs. State of

Uttarakhand and another, 2010(2) RCR (Criminal) 581, has reduced the sentence of the petitioner-accused in that case when the incident had taken place almost 27 years ago.

In the case of **Ram Chander vs. State of Haryana**, 2015(3) RCR (Criminal) 245, while relying upon the case of **Sadhu Ram vs. State of Haryana**, 1990(1) RCR (Criminal) 259, this Court has reduced the sentence to the period already undergone wherein the sample of the sweet soda water was not found as per the prescribed standard, but at the same time, was not found injurious to health.

In the case of **Umrao Singh vs. State of Haryana** AIR 1981 SC 1723, this Court has held that for adequate and special reasons, the sentence under Section 16(1)(a)(i) of the Act could be awarded lower than the minimum prescribed under the Act.

Having considered the judgment of this Court in **Umrao Singh's case (supra)**, this Court finds that the petitioner deserves to be extended the benefit of reduction in the sentence more particularly when the sample was not found injurious to health and moisture contents were marginally high.

Accordingly, taking into consideration the fact that petitioner is a petty shopkeeper, there being no other case of such or similar nature against him as well as the moisture contents which are marginally higher than the permissible limit, coupled

with the fact that as against the awarded sentence of 06 months, petitioner has already undergone 2 months and 9 days of imprisonment and also the fact that in the evidence of the GFI (PW1), it has nowhere comes that the moisture contents found in the *Shakkar* are injurious and the above referred judgments, while upholding the conviction of the petitioner Elayash, the order of sentence dated 6.11.2009 is modified and sentence awarded to the petitioner is reduced to the period already undergone.

With the above modification in the sentence, the instant revision stands dismissed.

However, it is made clear that in case the amount of fine is not paid, same be paid within a period of one month from today, failing which the instant petition shall be deemed to be dismissed in toto.

April 22, 2016
Vijay Asija

(**HARI PAL VERMA**)
JUDGE